



STAFF REPORT

TO: Board of Zoning Adjustment (BZA)

DATE: March 16, 2012

RE: Case No. **12-101BZA**, A request for a variance to Section 151-6.3G (13) of the Clay County Land Development Code, pertaining to the minimum distance of a Commercial Tower from all adjoining property lines, where such placement is in non-compliance of the 2011 Land Development Code (LDC) [approved February 27, 2012] requirements.

Contact: Justin Anderson, Selective Site Consultants, Inc.

Application: 02/28/12

Applicant: T-Mobile Central, LLC

S23 | T51 | R31

Owner: Robert E. Jr. & Ann M. Dorsel

Site Location: 6717 Nebo Hills Rd

Site Size: 12.5± acres

Existing Land Use and Zoning: Agricultural (AG) District

Zoning/Platting History: Conditional Use Permit (CUP) – case # Jan 97-104 CUP, approved 03/13/1997

Surrounding Land Use and Zoning:

North – Agriculturally zoned land (AG), Nebo Hill Estates (R-1)

East – Agriculturally zoned land (AG)

South – Agriculturally zoned land (AG), Rush Creek Properties/Underground (I-1/PUD)

West – Agriculturally zoned land (AG), Waterfall Manor

PHYSICAL CONDITIONS



REVIEW

Justin Anderson of Selective Site Consultants (“SSC”), agent to applicant T-Mobile Central, LLC (“T-Mobile”) and property owners Robert E. Jr. & Ann M. Dorsel currently operate an approximately 165-foot tall commercial telecommunications facility (also known as a “cell tower” or “commercial tower”) located at 6717 Nebo Hills Rd. The 12.5± acre subject property is zoned Agricultural (AG) District, and includes the cell tower shown on *Attachment A* and *Exhibit A*.

The existing cell tower was built in 1997, afterwards the property owners deeded off a piece of land to Public Water Supply District #5 (henceforth known as “PWSD”) who then built a water tower around 2005 approximately 65 feet from the pre-existing cell tower. Due to this new property line established by the deed to PWSD, the cell tower then did not meet the minimum setbacks for a commercial tower in accordance with Section 151-6.3 (G) (13), which was just changed from 2/3rds to 100% the height of the cell tower (approximately 165 feet).

The reason why the variance is now being requested from the minimum setback for commercial towers is that their original Conditional Use Permit (CUP) from 1997 is due for renewal in 2012, and this circumstance was identified during that review process.

Justin Anderson of SSC, representing T-Mobile and the property owners are requesting the following variance:

- **Existing Cell Tower:** a 140-foot setback variance.

In review of a non-use variance request, the following approval conditions must be met [*Section 151-3.12D (2)*]:

- A.** *“The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner’s intentional action;”*

Staff Response: The attached **letter** on **Exhibit A** has been presented by the petitioner.

- B.** *“The granting of the permit for the Variance will not be contrary to the public interest and will not adversely affect the rights of adjacent property owners or residents;”*

Staff Response: Public Notice was published for this case in the Kearney Courier on March 8, 2012, and certified letters were sent on March 9, 2012 to the adjacent property owners at the addresses furnished by the applicant. At this time, there have been no objections to the request.

- C.** *“The strict application of the provisions of which a Variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;”*

Staff Response: The attached **letter** on **Exhibit A** has been presented by the petitioner.

- D.** *“and, The Variance desired will not adversely affect the public health, safety, or general welfare, nor destroy the intent of the Comprehensive Plan.”*

Staff Response: The subject property falls within the Rural Low Density Tier of the 2008 Clay County Comprehensive Plan. This request for a variance will have no negative implications on the 2008 Comprehensive Plan. In addition, no opposition to this variance has been received to date.

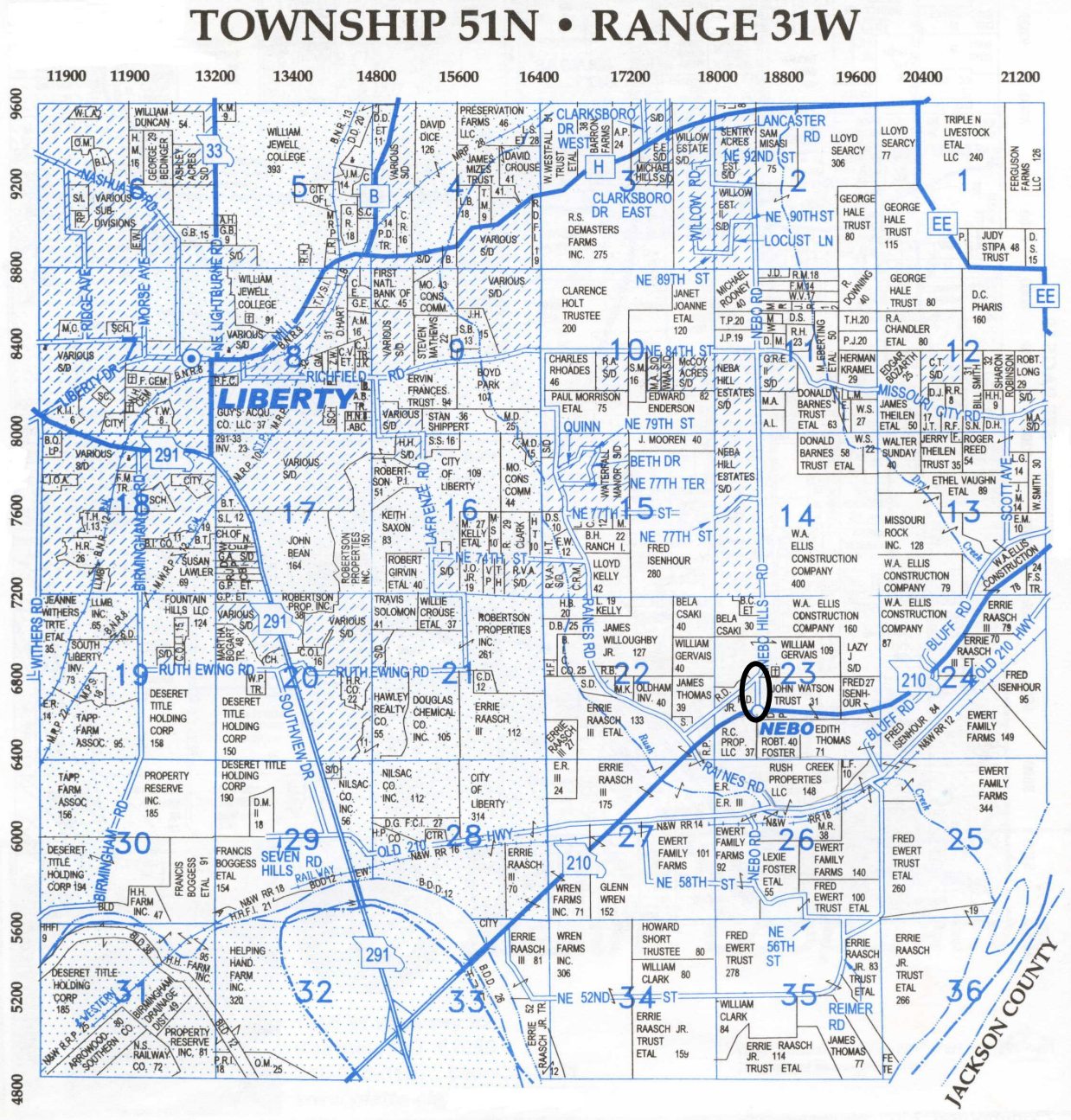
RECOMMENDATION

If the Board of Zoning Adjustment finds that the above four (4) approval criteria have been met, then the following variance is to authorize the request:

1. A one hundred and forty foot (140') setback variance from *Section 151-6.3 (G) (13)* to allow an existing commercial communications facility to remain 140 feet inside the property setback line.

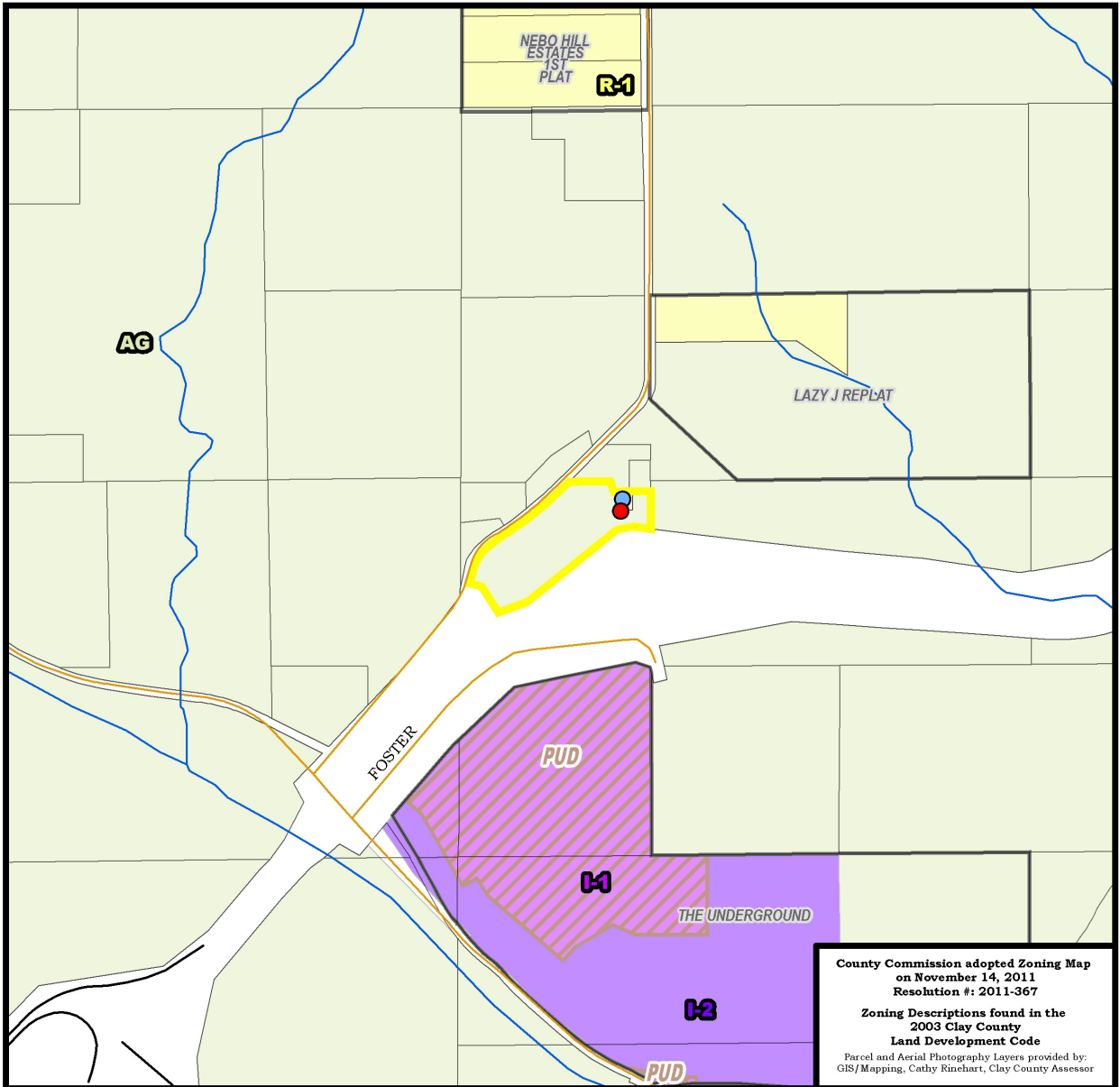
12-101BZA – T-Mobile / Dorsel

Attachment A – Vicinity Map



12-101BZA - T-Mobile

Attachment B - Existing Conditions Map



County Commission adopted Zoning Map
on November 14, 2011
Resolution #: 2011-367

Zoning Descriptions found in the
2003 Clay County
Land Development Code

Parcel and Aerial Photography Layers provided by:
GIS/Mapping, Cathy Rinehart, Clay County Assessor

Map Document: G:\GIS\Project_Files\Vacinity Map - 8 x 11 P.mxd
03/14/2012 -- 11:11:18 AM

Planning & Zoning Department



1 inch = 1,000 feet
1 inch = 0.19 miles

LEGEND

Existing Towers
TOWER TYPE
Cell Tower
Water Tower
Property Line

Streams (EPA)
Streams
Railroads

Roads CLASS
Interstates
State Highways
Local Roads
Highway Ramps

Overlay Districts
CD (Conservation District)
PUD (Planned Unit Development)

Subdivisions
County Boundaries
2011 City Limits
Parks

Zoning Districts
AG
R-1
R-1A
R-1B
R-3
C-1
C-2
C-3
M-1
M-2
OP

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Exhibit A – Petitioner Letter (p. 01 of 04)



March 12, 2012

Clay County Planning and Zoning
234 W. Shrader, Suite C
Liberty, MO 64068
Attn: Debbie Viviano
(816) 407-3380

RE: Reference – County Commission Resolution 97-75.
T-Mobile Central LLC (“T-Mobile”) f/k/a American Portable Telecom
 (“APT”) application for approval of a setback variance of 140’ for the
 continued use of a wireless tower (165’ tall) located at 6717 Nebo Hills Road.

To Whom It May Concern:

T-Mobile is applying for a setback variance of the referenced Conditional Use Permit for the continued use of a 165’ wireless tower at the referenced location to provide extended services for existing and new wireless customers. The facility will not only continue to provide valued service to existing customers but to new customer as well. Since its approval on March 13, 1997, this tower has had electronic upgrades to help provide value-added services as technology has advanced with smartphones (video, photos, music, etc.) – all of which require more data use and site upgrades. The enclosed coverage maps show the “with and without coverage” for this location.

Coverage Maps

The coverage maps will show the need for continued use of this site as it relates to an overall network of T-Mobile sites that will be incomplete for this area without this renewal. This tower is a key to maintaining an exceptional network for T-Mobile and its customers.

Site Design

Tower design – This site consists of a 165’ tower that is capable of co-locating other carriers.

9225 INDIAN CREEK PKWY, SUITE 400
OVERLAND PARK, KANSAS 66210

☎ 913.438.7700
f 913.438.7777
ssc.us.com

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Exhibit A – Petitioner Letter (p. 02 of 04)

Fenced Area – T-Mobile has an existing fenced lease area of a 30'x30'. The compound has a 4' x 6' gate for entrance on the west side of the compound. T-Mobile uses outdoor equipment that uses a small concrete pad.

Access – There is an existing gravel road to the west of the site that T-Mobile continued east as a 12' access road.

Setbacks – At the time of original approval, an easement was created to accommodate a 2/3 setback (110') for the tower.

Other Conditions

Interference – T-Mobile frequencies are proprietary and licensed through the Federal Communications Commission. Existing FCC approval of T-Mobile's operation is attached herein.

Public Service – This site will continue to provide services for personal, public and emergency services. The existing site will not affect any public facilities and will use minimal utilities.

Approval Criteria – Use Variances

- A. **Criteria** – the requested Variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action

Response – The original tower was approved with by the County with a condition of an established setback easement of 110', meeting the 2/3 setback requirement that was currently in place but recently adjusted to 1:1 setback. The request for this variance is due to a separate public subdivision (Water District) installing a water tower on top of the existing easement thus reducing the easement from 110' to 30'. The original property (Oldham Investments) owner was no longer the owner at this time of water tower construction but retains the leasehold rights. The current property owners, Robert and Ann Dorsel were unaware of the easement and it was not brought to their attention during the time of water tower construction.

This is a unique circumstance as T-Mobile was unaware the property changed hands as Oldham Investments and Mr. & Mrs. Dorsels have a secondary agreement allowing Oldham Investments to retain the lease rights. Also, it is very rare that a water tower is constructed directly next to a wireless tower, as typically the opposite is true.

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Exhibit A – Petitioner Letter (p. 03 of 04)

- B. **Criteria** – the granting of the permit for the Variance will not be contrary to the public interest and will not adversely affect the rights of adjacent property owners or residents.

Response – Granting this permit will ensure that the immediate coverage area and surround sites that depend on the coverage and capacity of this site will continue to provide valued wireless coverage for voice and data use, as well as the continued ability to help triangulate 911 calls from mobile devices.

- C. **Criteria** – the strict application of the provisions of which the Variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

Response – Upon obtaining zoning approval for this site 14 years ago, T-Mobile and the lease holder established an easement for the then required 2/3 setback. Neither party was aware that a water tower was being built on top of this easement, nor were the current property owners. The water tower was installed on the property in 2005. No one from the water district contacted the lease holder, T-Mobile or the current owners to request a conveyance of easement or to discuss any arrangement. There was also no permitting through the county as the water district does not need approval. It's unclear if the water district performed a title search, as to not encroach on existing land rights.

If a variance is not granted for the requested 140' (new 1:1 setback criteria) , T-mobile will not only suffer as a business who has land entitlements formerly approved by the County, but currently being encroached upon, but the general public will lose valuable communication service and diminished 911 capabilities.

- D. **Criteria** – the Variance desired will not adversely affect the public health, safety, or general welfare, nor destroy the intent of the *Comprehensive Plan*.

Response – The wireless tower has existed for 14 years in this location. T-Mobile has had no complaints during that time. The tower will continue to provide valued services, all with the licensing of the Federal Aviation Administration and Federal Communications Commission. All health and safety factors are deferred to the Telecommunications Act of 1996.

12-101BZA – T-Mobile / Dorsel

Exhibit A – Petitioner Letter (p. 04 of 04)

If there are any further questions or requirements please direct them to Justin Anderson. He will be attending public hearings for these projects.

Best regards,

A handwritten signature in blue ink, appearing to read 'Justin Anderson', is written over the printed name.

Encl: Propagation study (to be attached)
Cover letter